IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10254 of 1998

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHIVABHAI KODARBHAI PATEL

Versus

RAHEDA GROUP SEVA SAHKARI MANDLI LTD

Appearance:

1. Special Civil Application No. 10254 of 1998

MR JV JAPEE for Petitioner No. 1-3

MR RAVINDRA SHAH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 02/12/2004

ORAL JUDGEMENT

1. The petitioners have by way of this petition challenged the impugned order dated 28th August, 1998 passed by the Gujarat State Cooperative Tribunal [hereinafter referred to as "the Tribunal"] in Appeal No. 125 of 1995, whereby the Tribunal partly allowed the

appeal and set aside order passed below Exh.22 by the Board of Nominees in Suit No. 708 of 1994.

2. The short facts of the case are that the respondent has preferred Arbitration Suit No. 3356 of 1984 before the Board of Nominees Court, Ahmedabad against the petitioner for recovering an amount of Rs.1,26,118=30. However, the said Suit was transferred to the Board of Nominees Court, Mehsana being Suit No. 149/98. It is the case of the petitioners that though several opportunities were given, the respondent did not remain present to lead evidence and, therefore, the said Suit was dismissed for non prosecution on 4th March, 1993.

3. Being aggrieved by the said order, the respondent preferred fresh Suit being Suit No. 708 of 1994 on 12th August, 1994 before the Board of Nominees Court, Mehsana for the same cause of action. Alongwith the said suit, the respondent preferred an application for condonation of delay. In view of that the petitioners filed their written statement below Exh.22 with regard to hearing of issue of limitation. The Board of Nominee's Court vide order dated 20th April, 1995 dismissed the suit on the ground of limitation and holding that the same was not maintainable.

4. However, being aggrieved by the said dismissal order, the respondent preferred, Appeal being Appeal No. 125 of 1995 before the Tribunal. The Tribunal after having considered the submissions and the material produced before it, partly allowed the Appeal and set aside the order dated 20th April, 1995 passed below Exh. 22 by the Board of Nominees Court with a direction to remand the matter for fresh hearing. Hence, this petition.

5. Mr. Japee learned advocate for the petitioners has tried to canvass that the Tribunal has no jurisdiction to entertain the Appeal, since the order is passed under Section 97 (3) of the Act. Mr. Japee has also relied upon the decision of this Court in the case of Jitendra Natverlal Thaker & Ors. v. Hirabag Cooperative Housing Soc. Ltd. & Ors., reported in 1978 G.L.R. p.92.

6. I have heard the learned advocates for the respective parties and have perused the relevant record. The contention raised by Mr. Japee is misconceived inasmuch as the suit has been dismissed and the appeal is the only remedy available and the Tribunal has rightly

entertained the appeal and has remanded the matter in the interest of all concerned. Further the Board has passed the order in the interest of the petitioner by issuing direction to hear Exh. 6 and the delay condonation application preferred by respondent no. 2, since the same has not achieved finality. It is by and large open for the petitioners to appear before the Board of Nominees Court after remand. Moreover, in my opinion, the ratio laid down in the decision cited by the learned counsel for the petitioner will not apply to the facts of the present case inasmuch as the same pertains to the jurisdiction of the Tribunal under Section 36 of the Act. Admittedly, under Section 36 of the Act, the appropriate remedy available is to appear before District Judge for approval and then for Appeal or Revision before the Additional Registrar under Section 153 and under Section 155 of the Act before the State Government. The Tribunal has no jurisdiction to entertain any dispute under Section 36.

7. Further, before the Board of Nominees Court, the petitioner had filed Exh.22 raising preliminary objections on the ground that the suit is barred by limitation and, therefore, the suit must be dismissed on the ground of limitation. It appears that upholding the preliminary objections, the Board of Nominees Court allowed application at Exh. 22 and dismissed the suit. The Tribunal has partly allowed the appeal on the ground that the Society has already preferred an application below Exh. 6 for condonation of delay. I am of the view that until the application for condonation of delay is considered by the Court, the question of dismissing or even considering the application below Exh.22 for dismissing the suit on preliminary objection will not arise. In my opinion, the view taken by the Tribunal is just and proper and further the Tribunal has also remanded the matter to the Board of Nominees Court for fresh hearing where it will be open for the petitioner to raise all these contentions while hearing Exh.6 preferred by Society.

8. In the premises aforesaid, in my opinion, no illegality or error is committed by the Tribunal while allowing the Appeal and the petitioners have chance to appear before the Board of Nominees Court to raise all these contentions. Hence, the petition deserves to be dismissed. Accordingly the petition is dismissed. Rule is discharged with no order as to costs. Interim relief if any, stands vacated.

[K.S. JHAVERI, J.]

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